



BCKLWN Community Infrastructure Levy (CIL) Funding Policy

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Draft Cabinet Report

Introduction

This document provides the Council's Policy requirements, relating to the allocation and spending of CIL.

This document will be read in conjunction with the Council's CIL Spending Strategy, which provides specific details relating to the funding criteria and processes.

Within this document, reference to the 'applicant', refers to the Organisation allocated CIL funding, not a specific individual.

CIL Funding Applications

This section of the document specifically relates to CIL funding allocated through an application process.

Award of funding

1. The allocation of the Community Infrastructure Levy (CIL) Infrastructure Fund is subject to the applicants' acceptance of these terms and conditions, and any other requirements prescribed by the Council, as well as the completion and return of the Funding Agreement.
2. Any award must be used exclusively for the delivery of the Project as set out in the application submitted.
3. The Project must be carried out and completed to the standard and specification stated within the application form.
4. If the Organisation awarded funding fails to comply with any of these terms and conditions, BCKLWN ('the Council') may withhold, vary, terminate, or require any or all of the CIL award to be repaid.
5. The CIL funding will be conditional upon the applicant obtaining any necessary building regulations and/or planning permission and any other consents or permissions as may be required.
6. The CIL funding is a one-off payment. The Council will not be responsible for any future maintenance, revenue liability or ongoing funding related to the application.
7. There is no right of appeal against an award, refusal or withdrawal of CIL funding.

Starting the project

8. The Project must commence within the period stated in the application. If this is not possible, the applicant must inform the Council, in writing, of when they will start the project and the reason for the delay for approval by the Council.
9. For the purpose of this document, commencement is defined as when the works relating to the delivery of the Project materially begin.
10. Works already completed or expenditure incurred prior to the Applicant's acceptance of the offer will not be funded.

Approved projects for CIL funding

11. The works that are the subject of the CIL funding must be carried out strictly in accordance with the details as described in the application submission and in accordance with these terms and conditions.
12. The Council reserves the right to carry out independent financial checks, where appropriate, and may withdraw the offer at its sole discretion if it considers the public funds may be put at risk.
13. If during the course of the work, the applicant finds it impracticable to carry out the work in accordance with what was approved, then changes must only be made after written approval has been given by the Council. Failure to do so may result in the withdrawal or withholding of the funding or requirement to repay any sums already provided by the Council.
14. Where requested by the Council, the applicant must provide a written statement, or an appropriate certificate of completion, and the Council must be satisfied that the work has been carried out in accordance with the attached application form before payment of the funding.
15. On completion of the project, for publicity purposes, the applicant agrees to submit photographs (with no copyrights) of the completed project and agrees that these may be used to promote the CIL funding allocations.

Payment of funding

16. Subject to these terms and conditions, the Council shall pay the funds to the Applicant only after completion of the project and the submission of verifiable invoices.
17. The original invoices/receipts need to be submitted to the Council as proof of purchase and/or expenditure.
18. The Applicant agrees and accepts that the payment of the funds can only be made to the extent that the Council has available funds.
19. The organisation applying for funding must have a bank account into which the Council will pay the funding. As part of the acceptance of the offer of funding, you will need to provide the bank account details including the sort code, account number and name on the account.
20. CIL funding equivalent to the Project costs as demonstrated in compliance with paragraphs 11 and 15 of this Policy is the maximum CIL funding awarded to this scheme. If the Project cost is lower than the amount stated in the attached application form, unspent monies cannot be used on matters not included in the Offer Letter.
21. There will be no obligation on the Council to increase its offer in the event of cost increases affecting the work approved in the Offer Letter.
22. The Applicant shall repay to the Council any money incorrectly paid to it, whether this resulted as of an administrative error or otherwise, within 28 days. This includes (without limitation) situations where either an incorrect sum of money has been paid or where monies have been paid in error before all conditions attaching to the funds have been complied with by the Applicant.

Withholding or recovery of payment

23. It is the Council's intention that the funds will be paid to the Applicant in full. However, without prejudice to the Council's other rights and remedies, the Council may at its discretion withhold or suspend payment of the funds and/or require repayment of all or part of the funds if:
- a) the Applicant uses the funds for purposes other than those for which they have been awarded.
 - b) the Council considers that the Applicant has not made satisfactory progress with the delivery of the Project in accordance with approved or reasonable timelines;
 - c) the Applicant is, in the reasonable opinion of the Council, delivering the Project in a negligent manner.
 - d) the Applicant obtains funding from a third party which, in the reasonable opinion of the Council, undertakes activities that are likely to bring the reputation of the Project or the Council into disrepute.
 - e) the Applicant provides the Council with any materially misleading or inaccurate information.
 - f) the Applicant commits or committed a prohibited act under the Bribery Act.
 - g) any member of the governing body, employee or volunteer of the Applicant has (a) acted dishonestly or negligently at any time and directly or indirectly to the detriment of the Project or (b) taken any actions which, in the reasonable opinion of the Council, bring or are likely to bring the Council's name or reputation into disrepute.
 - h) the Applicant ceases to operate for any reason, or it passes a resolution (or any court of competent jurisdiction makes an order) that it be wound up or dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation).
 - i) the Applicant becomes insolvent, or it is declared bankrupt, or it is placed into receivership, administration or liquidation, or a petition has been presented for its winding up, or it enters into any arrangement or composition for the benefit of its creditors, or it is unable to pay its debts as they fall due.
 - j) the Applicant fails to comply with any of the terms and conditions set out in this Agreement and fails to rectify any such failure within 30 days of receiving written notice detailing the failure.
24. The Council may retain or set off any sums owed to it by the Applicant which have fallen due and payable against any sums due to the Applicant under this Agreement or any other agreement pursuant to which the Applicant is a party of.
25. Where the Applicant receives or intends to apply to a third party for other funding for the Project, it will notify the Council in advance of its intention to do so and, where such funding is obtained, it will provide the Council with details of the amount and the purpose of that funding. The Applicant agrees and accepts that it shall not apply for duplicate funding in respect of any part of the Project.
26. If the Applicant receives funding from a third party either during the delivery or after completion of the project, which in the reasonable opinion of the Council duplicates any part of the CIL Funding, the Council reserves the right to recover that amount of funding from the applicant.

27. If the Project does not comply with the delivery timetable stated within the application form and Offer Letter, the Council reserves the right to revoke or recover the amount of the funding, or such other amount as it considers reasonable.

Compliance and insurance

28. The applicant must ensure compliance with all regulations and legislation relating to the project including equality, sustainability and health and safety.
29. The applicant must ensure appropriate and sufficient insurance cover, including public liability and employer liability applicable to the project.

Limitation of liability

30. The Council accepts no liability for any consequences, whether direct or indirect, that may come about from the Applicant running the Project, the use of the funds or from withdrawal of the funds.
31. The Applicant shall indemnify and hold harmless the Council, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Applicant in relation to the Project, the non-fulfilment of the obligations of the Applicant or its obligations to third parties.
32. Subject to clause 27, the Council's liability under these terms and conditions is limited to the payment of the funds.

Communication and monitoring

33. The Applicant must maintain regular communication with the Council, following the acceptance of the offer, as detailed within the Offer Confirmation Letter. The Applicant should provide regular updates and information on the project until it has been completed.
34. In any event the Applicant shall within 7 days after written request by the Council provide the Council with such information and documents as the Council may reasonably require, to enable the Council to verify that the Applicant has complied with its obligations under these terms and conditions.
35. The applicant must provide an annual return no later than 01 May each year, with information on the progress of the Project, within the previous financial year. This will ensure the Council is able to fulfil its monitoring requirements under the CIL Regulations 2010 (as amended Sept 2019).

Publicity for the project

36. The Applicant must acknowledge the support of the Council in any materials that refer to the Project, and in any written or spoken public representations about the Project, in a form or style agreed in advance with the Council.
37. Where the Council has provided the Applicant with any of its intellectual property rights for use in connection with the Project (including without limitation its name and logo), it shall only be used in accordance with reasonable brand guidelines.
38. The Council reserves the right to use images of the Project, resulting from the award of the CIL funding, as part of any publicity material that it may wish.

Freedom of information

39. The Applicant acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIRs).
40. The Applicant shall:
 - a) provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and EIRs;
 - b) transfer to the Council all requests for information relating to this agreement that it receives as soon as practicable and in any event within 2 working days of receipt;
 - c) provide the Council with a copy of all information belonging to the Council requested in the request for information which is in its possession or control in the form that the Council requires within 5 working days (or such other period as the Council may reasonably specify) of the Council's request for such information; and
 - d) not respond directly to a request for information unless authorised in writing to do so by the Council.
41. The Applicant acknowledges that the Council may be required under the FOIA and EIRs to disclose information without consulting or obtaining consent from the Applicant. The Council shall take reasonable steps to notify the Applicant of a request for information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but notwithstanding any other provision in this agreement) the Council shall be responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

CIL Funding – Strategic Projects

This section of the document specifically relates to CIL funding allocated to projects identified by Cabinet, as infrastructure to support development within West Norfolk.

The Project Lead Officer(s) will be responsible to managing the project in line with the Council's internal policies and procedures which will include procurement and legislative requirements, in addition to these terms and conditions.

Award of funding

- 42. Any award of CIL funding must be used exclusively for the delivery of the identified Project.
- 43. CIL funding will not be allocated for future maintenance, revenue liability or ongoing funding related to the Project.

Payment of funding

- 44. The Lead Project Officer(s) will be responsible for ensuring that all CIL expenditure is reported to the CIL Team.
- 45. The CIL Team will transfer the allocated CIL to the project Cost Code, on receipt of expenditure information.
- 46. Payment can only be made, to the extent that there are available CIL funds.
- 47. CIL funding equivalent to the Project costs as stated at the time of project allocation, is the maximum CIL funding awarded to this scheme.
- 48. If the Project cost is lower than the amount allocated, unspent monies cannot be used on matters not included in the original identified project.
- 49. There will be no obligation to increase the CIL allocated to the project, in the event of cost increases affecting the work.

Communication and monitoring

- 50. The Council's project lead must communicate with the CIL Team, by providing details of CIL expenditure, until such time that all of the allocated funds have been spent.
- 51. The Project Lead Officer(s) must provide an annual return no later than 01 May each year, with information on the progress of the Project, within the previous financial year This will ensure the Council is able to fulfil its monitoring requirements under the CIL Regulations 2010 (as amended Sept 2019).
- 52. Details of all CIL funds allocated and spent will be recorded in the Council's Annual Infrastructure Funding Statement.

Miscellaneous

- 53. The Council reserves the right to vary these terms and conditions. Such a right will be exercised by the Council acting reasonably.
- 54. No provision of these terms and conditions shall be enforceable or intend to confer any contractual benefit on any person under the Contracts (Rights of Third Parties) Act 1999.

55. Insofar as any clause or clauses of these terms and conditions are found (for whatever reason) to be invalid, illegal or unenforceable then such invalidity, illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of these terms and conditions.
56. All notices and other communications in relation to these terms and conditions shall be in writing and shall be deemed to have been given if personally delivered, emailed or mailed (first class postage prepaid) to the address of the relevant party, as referred to above or otherwise notified in writing. If personally delivered or if emailed all such communications shall be deemed to have been given when received (except that if received on a non-working day or after 5.00 pm on any working day they shall be deemed received on the next working day) and if mailed all such communications shall be deemed to have been given and received on the second working days following such mailing.
57. These terms and conditions shall not create any partnership or joint venture between the Council and the Applicant, nor any relationship of principal and agent, nor authorise any party to make or enter into any commitments for or on behalf of the other party.
58. No waiver (whether expressed or implied) by the Council or Applicant of any breach or default in performing or observing any of the covenants, terms, or conditions of these terms and conditions shall constitute a continuing waiver and no such waiver shall prevent the Council or Applicant from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.
59. These terms and conditions are governed by and interpreted in accordance with the laws of England and Wales